

*Electronically Filed on:
March 12, 2007*

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Attorneys for Fertitta Enterprises, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

USA SECURITIES, LLC,
Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

Chapter 11
DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF FERTITTA ENTERPRISES, INC.'S OPPOSITION TO DEBTORS' MOTION TO AUTHORIZE DEBTOR USA COMMERCIAL MORTGAGE COMPANY AS LOAN SERVICER TO ACCEPT PAYMENTS AND PROVIDE RECONVEYANCES FOR TWO COLT GATEWAY LOANS, WITH CERTIFICATE OF SERVICE

Hearing Date: March 15, 2007
Hearing Time: 9:30 am

I, William J. Bullard, declare under penalty of perjury and state as follows:

1. I am the Chief Financial Officer at Fertitta Enterprises, Inc. ("Fertitta"), a co-lender to the Colt Gateway LLC loan being administered by USA Commercial Mortgage Company ("Debtor"). I have personal knowledge of the facts recited herein, and I am competent to testify

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1 regarding them, except with respect to those facts that are on information and belief, and as to
2 those facts, I believe them to be true.

3 2. I make this Declaration in support of Fertitta's Opposition to Debtors' Motion to
4 Authorize Debtor USA Commercial Mortgage Company as Loan Servicer to Accept Payments
5 and Provide Reconveyances for Two Colt Gateway Loans.

6 **Colt Gateway's Ability to Pay Off the Loans**

7 3. On March 12, 2007, I spoke via telephone with Robert MacFarlane, president of
8 Colt Gateway.

9 4. I asked Mr. MacFarlane to provide me with any written commitment that Colt
10 Gateway has for financing to pay off the loans.

11 5. I later received a fax from Mr. MacFarlane consisting of an nonbinding and expired
12 letter offer from PRIF II Acquisition, LLC, a true and accurate copy which is attached at Exhibit
13 1.

14 6. The letter, dated January 22, 2007, states that it "constitutes neither an offer nor a
15 commitment by PRIF in any form, but rather summarizes the terms of the proposed transaction."

16 7. The letter is not executed and states that the terms expired on January 29, 2007.

17 **Fertitta's Rights as a Lender**

18 8. Fertitta never waived its right to collect interest at the default rate on the Colt
19 Gateway #1 Loan.

20 9. Colt Gateway has been in default on the Colt Gateway #1 loan since December 23,
21 2003, because it did not pay off the loan by its maturity date of December 22, 2003.

22 10. I have not authorized, seen, or executed an extension of the promissory note.

23 11. Since the default, interest has accrued at the default rate of 20 percent, or 5 percent
24 greater than the standard 15 percent interest rate.

25 12. Colt Gateway owes \$310,688.57 in default interest from January 1, 2004, through
26 February 28, 2007, based on the figures in the investor history report provided to me by USA
27 Commercial (a true and accurate copy attached hereto as Exhibit 2) and the 5 percent increase in
28

1 the interest rate after Colt Gateway's default, as evidenced by the spreadsheet attached as Exhibit

2 2. This figure is the amount accrued for all lenders on the Colt Gateway #1 Loan.

3 13. Fertitta never waived its right to collect late fees owed by the borrower on the Colt
4 Gateway #1 Loan.

5 14. Colt Gateway also owes \$163,069.69 as the 5 percent late charge pursuant to the
6 terms of the loan documents and the outstanding balance of \$3,261,393.94 as of December 31,
7 2003, eight days after the loan matured and Colt Gateway defaulted, as evidenced by the true and
8 accurate copy of the investor history report attached as exhibit 2. This figure is the late charge for
9 all lenders on the Colt Gateway #1 Loan.

10 DATED this 12th day of March, 2007.

11
12 //s//William J. Bullard
13 WILLIAM J. BULLARD

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CERTIFICATE OF SERVICE

1. On March 12, 2007, I served the following document(s):

DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF FERTITTA ENTERPRISES, INC.'S OPPOSITION TO DEBTORS' MOTION TO AUTHORIZE DEBTOR USA COMMERCIAL MORTGAGE COMPANY AS LOAN SERVICER TO ACCEPT PAYMENTS AND PROVIDE RECONVEYANCES FOR TWO COLT GATEWAY LOANS, WITH CERTIFICATE OF SERVICE

2. I served the above-named document(s) by the following means to the persons as listed below:

■ a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

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9 b. **United States mail, postage fully prepaid** (list persons and addresses):

9 c. **Personal Service** (list persons and addresses):
I personally delivered the document(s) to the persons at these addresses:

9 For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

9 For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

■ d. **By direct email (as opposed to through the ECF System)** (list persons and email addresses):

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Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

9 e. **By fax transmission** (list persons and fax numbers):

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Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

9 f. **By messenger:**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of March, 2007.

Louis M. Bubala III
Name

//s// Louis M. Bubala III
Signature

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